HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.591 of 2007

Between:

Badri Chandraiah

… Appellant

And

The District Collector, Nellore,
and two others

… Respondents

::JUDGMENT::

Counsel for the appellant : Shri S.A. Chari

Counsel for the respondents : Government Pleader for Revenue

July 31, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 18.7.2007 passed by the learned Single Judge in Writ Petition No.10200 of 2007 whereby he refused to nullify proceedings dated 28.4.2007 issued by Sub-Collector, Gudur, Nellore District (respondent No.2) under Section 10 of the Andhra Pradesh Land Encroachment Act, 1905 (for short, 'the 1905 Act').

The appellant unauthorisedly occupied government land measuring 17 ankanams i.e. 136 square yards in Gudur Konetimetta Survey No.1620-4 and constructed a residential house. He also installed oil rotary in 1981 after obtaining permission from Gudur Municipality. In 1987, Mandal Revenue Officer, Gudur (respondent No.3) regularised the unauthorised occupation of the appellant. Thereafter, he was issued house-site patta bearing Rc.B.No.436/1986.

It is borne out from the record that in the guise of regularisation of his occupation of 136 sq. yds. of land in Survey No.1620-4, the petitioner encroached on R & B road in Field No.68. Therefore, respondent No.3 issued notice under Section 6 of the 1905 Act and called upon the appellant to vacate the encroachment. The appellant submitted reply and claimed that the provisions of the 1905 Act cannot be invoked against him because his possession had been regularised. Respondent No.3 did not accept the appellant's plea and passed order dated 31.1.2007 for his eviction. The appeal preferred against that order was dismissed by Sub-Collector, Gudur (respondent No.2) vide order dated 28.4.2007 by recording the following observations:

> "The main contention of the appellant is that the site, which is in their occupation and enjoyment, is not R & B road poramboke, that the Revenue Authorities granted house site patta for the site in favour of the appellant as per the occupation at the time of grant on payment of market value, that they are in possession and enjoyment of the site from the date of grant without any objection, that the site is not R & B road poramboke and that this case will not come under the purview of the Act III of 1905.
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> It is revealed from the records of the Mandal Revenue Officer, Gudur that the Revenue and R & B officials have conducted joint survey of the land and identified the encroachments in the R & B road. According to the said joint survey, the appellant is in encroachment of the R & B road. The Mandal Revenue Officer, Gudur issued notice to the appellant as stipulated under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 calling for the explanation of the appellant giving the details of the land under encroachment. The appellant has also submitted their explanation to their Mandal Revenue Officer, examined it. Finally, the Mandal Revenue Officer, Gudur issued orders under Section 6 of the said Act directing eviction of the encroachment of the appellant.
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> As observed above, it is evident that the appellant is in encroachment of R & B road poramboke in Field No.68 upto the extent mentioned in the orders of the Mandal Revenue Officer, Gudur. He is not in the land granted on patta by the Government in S.No.1620/4 as claimed by the appellant. Encroachment in R & B road in any way is highly objectionable and liable for eviction summarily. Hence, this case comes under the purview of the Act III of 1905 and the orders issued by the Mandal Revenue Officer, Gudur under Section 6 of the said Act are in conformity with the provisions

of the Act III of 1905."

In the writ petition filed by him, the appellant pleaded that dispute relating to title of the land in question can be decided only by the civil court and respondent No.2 committed a serious illegality by approving the order of eviction passed by respondent No.3. He also relied on the judgment of this Court in **Prakash Rathode v. The Sub-Collector**[1] and contended that his occupation of the disputed land cannot be termed as unauthorised because the same had been regularised by respondent No.3 in 1987.

The learned Single Judge negatived the plea of the appellant and dismissed the writ petition. The learned Single Judge referred to the judgment of the Supreme Court in **Government of A.P. v. T. Krishna Rao**[2] on which reliance has been placed by the learned counsel for the appellant and observed:

> "It is now well settled that a road is meant for the people to pass and re-pass and no part of the road can be allowed to be encroached upon by any person, even if such person claims an inchoate right by reason of assignment of land, which is adjacent to R&B road. Even according to petitioner, as disclosed in the affidavit accompanying the writ petition, he occupied the land in survey No.1620-4 admeasuring 136 square yards, but he is not ordered to be evicted from a piece of land in Field No.68, which is R&B road. In such a situation, reliance placed on **T.Krishna Rao** (supra) is wholly misconceived. Even otherwise, the principle canvassed by learned counsel that in every case of disputed title, the Government should be compelled to go to civil Court to seek declaration of title is not of universal application. I n **Raidurg Cooperative House Building Society Limited v Government of Andhra Pradesh {2003 (3) ALD 2},** this Court considered this aspect of the matter. After referring to **T.Krishna Rao** (supra), **Special Deputy Collector v K.L.Bapuji {1984 (1) APLJ 219 (DB)}** and **Shivalingappa v State of Andhra Pradesh {1988 (1) ALT 716}**, this Court laid down that longstanding possession is one of the factors and the same cannot be the only factor to compel the Government to go and avail remedy of civil suit."

Shri S.A. Chari, learned counsel for the appellant strongly relied on the judgment of the Supreme Court in **Govt. of A.P. v. T. Krishna**

Rao (supra) and argued that the order of eviction passed by respondent No.2 is liable to be quashed because the said respondent did not have the power, jurisdiction or authority to decide the question of title. Learned counsel emphasized that the appellant's possession over the disputed land had been regularised by the competent authority in the year 1987 and argued that even if there was some dispute about his entitlement to retain possession of the land, the summary procedure contemplated under the Act could not have been resorted to for his eviction.

We have considered the submissions of the learned counsel, but have not felt impressed. Rather, we are convinced that the appeal is wholly meritless and is liable to be dismissed summarily. In the writ petition filed by him, the appellant had pleaded that respondent No.3 had regularised the occupation of 136 sq. yds. of land in Survey No.1620-4. However, there is nothing in the affidavit filed by the appellant from which it can be inferred that he had laid claim over R & B road comprised in Field No.68. Therefore, his plea that the respondents could not have initiated proceedings under the 1905 Act was clearly misconceived and the learned Single Judge did not commit any error by refusing to entertain the same.

Before the Division Bench also, the appellant has not produced any document to show that he or his family had occupied the land belonging to R & B Department in Field No.68, which form part of the road, and that his possession was regularised by the competent authority. Rather, a reading of orders dated 31.1.2007 and 28.4.2007 passed by respondent Nos.3 and 2 respectively makes it clear that the appellant had unauthorisedly encroached on the R & B road forming part of Field No.68. Therefore, the action taken by the concerned authorities under the 1905 Act cannot be questioned on the ground of lack of jurisdiction.

The judgment of the Supreme Court in **Krishna Rao**'s case (supra) is clearly distinguishable. The facts of that case show that the

lands, which were occupied by the respondents originally belonged to Nawab Zianuddin. After his death, the same devolved on Nawab Habibuddin. Between 1932 and 1937, certain lands were acquired by the Government of the Nizam of Hyderabad for Osmania University by invoking the provisions of the Hyderabad Land Acquisition Act, 1309 Fasli. The question whether the land forming part of Plot No.94 (R.S.No.10/1), Plot No.104 (R.S.No.10/2) and Plot No.111 (R.S.Nos.7, 8 and 9) were included in the acquisition notified by the Government of Nizam became a bone of contention between the parties. The Osmania University pleaded that the plots form part of the acquired land, whereas Nawab Habibuddin contended that the three plots were not acquired. On February, 1936, the Osmania University filed suit against Nawab Habibuddin in the City Civil Court, Hyderabad for the latter's eviction. That suit was dismissed in 1959 on the ground that Plot No.111 was not acquired by the government and that though Plot Nos.94 and 104 were acquired, the University failed to prove its possession thereof within 12 years before filing of the suit. Civil Appeal No.61 of 1959 filed by the University was dismissed by the High Court. Thereafter, on being moved by the Osmania University, the State Government invoked the provisions of Section 7 of the 1905 Act. On December 15, 1964, the Tahsildar passed an order of eviction against Nawab Habibuddin. The latter unsuccessfully carried the matter to the Collector and the Board of Revenue. Subsequently, his legal heirs unsuccessfully appealed before the government. On March, 1974, the respondents filed writ petitions in the High Court. The learned Single Judge dismissed the writ petitions. On appeal, the Division Bench held as under:

> "The question whether the lands belong to Osmania University or not will have to be decided as and when the Government comes forward with a suit for the purpose. Even if we assume for the purpose of our judgment, as we are not pronouncing any conclusion as to whether the land vested in the Government or University that the Government is the owner, the dispute going back from 1942 cannot be dealt with in summary proceedings under

Section 7 of the Land Encroachment Act."

The Supreme Court approved the view of the Division Bench and held:

> "It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is "the property of Government". In regard to property described in sub-sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in Unauthorised occupation of property which is declared by Sec. 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6 (1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land "for which he is liable to pay assessment under Section 3." Section 3, in turn, refers to unauthorised occupation of any land "which is the property of Government". If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that, the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for

evicting the respondents."

In our opinion, the above noted judgment has no bearing on the case in hand because, as mentioned above, in the present case, the appellant has neither pleaded nor any evidence has been produced by him to show that he is in occupation of land forming part of R & B road in Field No.68.

In **Shivalingappa v. State of A.P.**[3], a learned Single Judge of this Court distinguished the Supreme Court's judgment in **T. Krishna Rao** (supra) and a judgment of this Court in **Special Deputy Collector v. K.L. Bapuji**[4] and observed that these two decisions do not lay down any general law that whenever the persons sought to be evicted from the land claim their possession to be not unauthorised, the Government should be compelled to go to a Civil Court. It was also observed that when there is evidence that Government is in possession of the land, the Court must not conclude that the petitioner raised a bona fide claim about the possession.

In **Raidurg Co-op. House Building Society Ltd. v. Govt. of A.P.**[5], V.V.S.Rao, J dealt with the issue at length and held:

> "When the land was surveyed as Government poramboke land and Revenue Records show as such, the petitioners cannot allege long standing occupation when pattas given to Chandni Begum and Sonabai are not genuine and incorrect. Merely placing reliance on some communications among various officials, it cannot be said that there is a bona fide and genuine dispute of title. In a given case even if there is evidence of showing the possession of a person, it cannot be said that there is bona fide dispute. Long standing possession is one of the factors and the same cannot be the only factor to compel the government to go and avail remedy of civil suit."

In our opinion, the proposition laid down in **Shivalingappa v. State of A.P.** (supra) and **Raidurg Co-op. House Building Society Ltd. v. Govt. of A.P.** (supra) represent the correct proposition of law. Therefore, we do not find any valid ground to interfere with the order under challenge.

There is another reason for our disinclination to entertain the appeal. For the reasons best known to him, the appellant has not challenged order dated 31.1.2007 passed by respondent No.3 under Section 6 of the 1905 Act. Therefore, even if the appellate order dated 30.4.2007 passed by respondent No.2 is nullified, his eviction cannot be annulled.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.1184 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

July 31, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] AIR 1995 AP 157

[2] AIR 1982 SC 1081

[3] 1988 (1) ALT 716

[4] 1984 (1) APLJ 219 (DB)

[5] 2003 (3) ALD 2